

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 17444
[REDACTED]                      Petitioner.	)	
	)	DECISION
	)	
	)	

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On April 28, 2003, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income tax, penalty, and interest for the taxable years 1998 through 2000 in the total amount of \$26,371.

On June 25, 2003, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing but chose to provide additional information and materials for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau (Bureau) received information [Redacted] regarding the taxpayer's 1996 through 1999 federal income tax filings. The Bureau searched the Tax Commission's records and found that the taxpayer had not filed Idaho individual income tax returns. The Bureau sent a letter to the taxpayer asking about his requirement to file Idaho income tax returns. The taxpayer responded that he had no tax liability for those years; he was not a resident of Idaho as the term is defined; he had no income or gross income as those terms are defined; he was not employed during those years; he is not an individual as it is defined in federal law; and he was not subject to Title 26.

The Bureau reviewed the information [Redacted], [Redacted], gathered other information from third party sources, and made a determination that the taxpayer was required to

file Idaho income tax returns for the tax years 1998 through 2000. The Bureau prepared returns for the taxpayer and sent him a Notice of Deficiency Determination.

The taxpayer protested the Bureau's determination. He stated that the Bureau was operating on an incorrect presumption that he was a person subject to the Idaho income tax. He stated that the constitution of the United States provided, in Article I section 2, that all direct taxes be apportioned. The taxpayer said the Idaho tax is a non-apportioned direct tax that cannot be applied to him. The taxpayer stated the Sixteenth Amendment did not provide for any new taxing authority. He cited Brushaber v. Union Pacific RR Co., 240 U.S. 1, as support for his statements. The taxpayer also stated he had no income as defined by the courts in Doyal v. Mitchell Brothers, 247 U.S. 179; Eisner vs. Macomber, 252 U.S. 189; and Merchants Loan & Trust Co. vs. Smietanka, 255 U.S. 509.

The Bureau referred the matter for administrative review and the Tax Commission sent the taxpayer a letter giving him two options for redetermining the Notice of Deficiency Determination. The taxpayer responded that he wanted to submit additional documents and asked that he have until October 1, 2003 to provide the information. The Tax Commission agreed with the taxpayer's timetable and waited for the documentation to arrive. October 1, 2003 came and went with no additional information being provided. The Tax Commission sent the taxpayer a follow-up letter with a deadline to provide the additional documentation, but the taxpayer did not respond or provide any additional materials. However, on December 23, 2003, the taxpayer did deliver completed Idaho income tax returns to the Tax Commission's Coeur d'Alene office.

The Tax Commission reviewed the taxpayer's returns and found them to be a better representation of the taxpayer's taxable income than the returns the Bureau prepared. Therefore,

the Tax Commission accepted the taxpayer's returns, subject to the normal review process of the Tax Commission, in lieu of the returns prepared by the Bureau. In addition to the taxable years questioned by the Bureau, the taxpayer submitted Idaho income tax returns for the taxable years 1997, 2001 and 2002.

The returns the taxpayer provided all showed tax due and owing. Therefore, the Tax Commission added interest and penalty to the taxpayer's Idaho tax in accordance with Idaho Code sections 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated April 28, 2003, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1998	\$5,254	\$1,314	\$1,825	\$ 8,393
1999	5,240	1,310	1,438	7,988
2000	5,006	1,252	973	<u>7,231</u>
			TOTAL DUE	<u>\$23,612</u>

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2004.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

## CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2004, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.

[REDACTED]

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